



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**[Docket No. FMCSA-2017-0120]**

**Hours of Service of Drivers: Application for Exemption; G4S Secure Solutions (USA), Inc. (G4S)**

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of final disposition; denial of application for exemption.

**SUMMARY:** FMCSA announces its decision to deny the application of G4S Secure Solutions (USA), Inc. (G4S), for an exemption from the requirement that its drivers use electronic logging devices (ELDs) to record their hours of service (HOS). G4S requested the exemption for all its drivers of customer/government-owned vehicles used intermittently to perform passenger transportation. FMCSA analyzed the exemption application and public comments, and determined that the record does not establish that the applicant would not achieve a level of safety equivalent to, or greater than, the level that would be achieved absent such exemption. FMCSA therefore issued a letter of denial to the applicant on January 5, 2018.

**DATES:** Application for exemption was denied January 5, 2018.

**FOR FURTHER INFORMATION CONTACT:** For information concerning this notice, contact Mr. Tom Yager, Chief, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 614-942-6477.

E-mail: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **Background**

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

FMCSA reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305(a)). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice also must specify the effective period of the exemption (up to 5 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

### **III. Request for Exemption**

G4S is an international security solutions group, with operations in more than 100 countries and more than 54,000 employees in North America. One component of G4S's operations is detainee and prisoner transport. Government agencies across the country, including the U.S. Immigration and Customs Enforcement and State/county

police departments, contract with G4S to safely and securely transport prisoners, offenders, and illegal aliens. To perform these transportation services, G4S is registered with the FMCSA as a for-hire motor carrier. While the company maintains a relatively small fleet of vehicles, a significant portion of its transportation services are performed by G4S employees operating customer/government-owned equipment (e.g., buses and 15-passenger-vans).

The company had started the process of installing compliant ELDs in its own vehicle fleet. G4S, however, believed an exemption was for instances when its drivers operate customer/government-owned equipment to perform passenger transportation services. In these instances, it is the customer, not G4S, that owns and maintains the vehicles. For its part, G4S provides qualified drivers to operate the vehicles and is explicitly precluded, often by contract, from making any modifications to or installing any equipment in the vehicles.

G4S claimed that, from a safety perspective, its operations are indistinguishable from driveaway-towaway operations, which are excluded from the ELD mandate. In these instances, neither the carriers nor the drivers own the vehicles being driven, nor are they authorized to make any modifications to those vehicles. Similarly, in both cases, the vehicles at issue may only be operated by the carrier's drivers for a single trip.

The application for exemption is in the docket for this notice.

#### **IV. Public Comments**

On April 21, 2017, FMCSA published notice of the G4S application and requested public comment (82 FR 18820). The Agency received three comments, and all opposed the granting of the G4S exemption request. Groups filing in opposition were the

Advocates for Highway and Auto Safety (Advocates), the Owner-Operator Independent Driver's Association (OOIDA), and the Commercial Vehicle Safety Alliance (CVSA).

Issues raised by these commenters in opposition to the exemption request are as follows.

(1) The G4S application does not meet the statutory and regulatory requirements for the exemption. It fails to consider practical alternatives, justify the need for exemption, provide an analysis of the safety impacts the requested exemption may cause, and provide information on the specific countermeasures to be undertaken to ensure that the exemption will achieve an equivalent or greater level of safety than would be achieved absent the exemption.

(2) G4S cites technical concerns regarding interoperability of ELDs and the use of different vehicles as reasons why their drivers should be exempted from the ELD mandate. While these points are legitimate, they are not limited to this carrier. Carriers of all sizes may encounter these same interoperability problems as drivers operate multiple ELD platforms with varying methods of data transfer.

(3) Confusion and inconsistencies, such as patchwork adoption of the ELD requirement because of exemptions, create more work for the enforcement community and industry alike. These inconsistencies also have a direct impact on data quality, an especially important consideration for the accurate tracking of HOS compliance.

All comments are available for review in the docket for this notice.

## **V. FMCSA Decision**

When FMCSA published the final rule mandating ELDs, it relied upon research indicating that the rule improves commercial motor vehicle (CMV) safety by improving

compliance with the hours-of-service rules. The rule also reduces the overall paperwork burden for both motor carriers and drivers.

In its application, G4S provides no analysis of the safety performance of drivers who would operate using paper records of duty status under the exemption. G4S compares its request to the ELD regulatory exception for driveaway-towaway vehicles, but provides no analysis of how the risk of fatigue and crashes when operating an empty vehicle in a driveaway-towaway operation would be equivalent to the risk posed by operating a passenger-carrying vehicle.

The G4S application does not consider practical alternatives or provide an analysis of the safety impacts the requested exemption may cause. It also does not provide countermeasures to be undertaken to ensure that the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation.

For these reasons, FMCSA denied the request for exemption by letter dated January 5, 2018.

Issued on: February 20, 2018.

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Larry W. Minor,  
Associate Administrator for Policy.

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